

TRANSCRIPT
January 3, 2002
Water Quality Act Fee Rules Hearing

Good Morning. This hearing is called to order. Let the record show: It is 10:00 on January 3, 2002. This hearing is taking place in Room 111 of the Metcalf Building, 1520 East 6th Avenue, Helena, Montana. This is a time and place set for the public hearing in the matter of the proposed amendment of ARM 17.30.201 dealing with Water Quality Permit and Authorization Fees. This public hearing is being recorded by Bonnie Lovelace of DEQ. I am Thomas G. Bowe; I'm an assistant attorney general for the State of Montana. I have been designated by the Board as Presiding Officer for this public hearing. Copies of the proposed amendments are available on the table in the middle of the room for anyone who has not received a copy. Anyone who presents or wishes to testify or submit written materials who has not filled out a sign up sheet, there on the table in the middle of the room, should do so before the hearing receives your public comments.

Montana Code Annotated, Section 2-4-302, subparagraph 7A, requires the hearing officers at rule hearings to read the Notice of Function of Administrative Rule Review Committee. The notice is as follows:

Administrative rule review is a function of interim committees and the Environmental Quality Council, EQC. These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for executive branch agencies and the entities attached to agencies for administrative purposes.

In this case, the EQC has those functions for the Department of Environmental Quality for the Board of Environmental Review. These interim committees and the EQC have the authority to make recommendations to an agency regarding the amendment adoption or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during the Legislative Session, introduce a bill repealing the rule or directing an agency to adopt or amend a rule or a joint resolution recommending that an agency adopt, amend, or repeal a rule. The interim committees and the EQC recommend comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is PO Box 201706, Helena MT 59620-1706.

Montana Code Annotated Section 2-4-302, subparagraph 7A, requires each agency, which includes Boards, to create and maintain a list of interested persons and the rulemaking subject or subjects in which each person on the list is interested. A person, who submits a written comment or attends a hearing regarding proposed agency rulemaking, must be informed of the list by the agency. The Department of Environmental Quality maintains a list of persons interested in various areas of

rulemaking conducted by the Department and by the Board of Environmental Review so that the Department can provide these persons with notice of proposed rulemaking actions.

On the table in the middle of the room are forms for interested persons to designate their areas of interest in rulemaking so the Department can notify them with proposed rulemaking actions in their areas of interest. If you would like to be placed on a rulemaking interested persons list, please complete one of the forms and leave it on the table. This is the same form to identify yourself if you are going to be submitting comments today and in the comment portion of the form, just indicate that you want to be placed on DEQ's list of interested persons and list the subject matter of your interest.

Notice of this hearing was published in the Montana Administrative Register, notice number 17-149, published on December 6, 2001, issue number 23, at pages 2361-2372. The notice stated that on January 3, 2002 beginning at 10:00 a.m. in Room 111 of the Metcalf Building, a public hearing would be held to consider the proposed amendment of ARM 17.30.201. The notice of hearing stated that interested persons could submit their data, views, or arguments, either orally or in writing, at this hearing or submit written data, views, or arguments to the Board of Environmental Review. Written comments submitted after this hearing should be addressed to the Board and delivered to the Board Secretary at the Metcalf Building or mailed to the Board at PO Box 200901, Helena MT 59620-0901 or faxed to 406 444-4386 or sent by electronic mail to BER@state.mt.us. To guarantee a consideration by the Board, comments must be postmarked or e-mailed by 5:00 p.m. on January 3, 2002.

Because of its length, I will not read the entire Notice of Public Hearing on the proposed amendment. To summarize, in the notice, the Board of Environmental Review proposes to amend 17.30.201 of the ARM pertaining to water quality permit and authorization fees. The authority of the Board of Environmental Review to make the proposed rule amendments is contained within Montana Code Annotated, Section 75-5-516. A complete copy of the notice is on the table in the middle of the room and will be included in the official record of this hearing.

As presiding officer, I may ask questions of persons testifying at the hearing and I may allow others to ask questions upon request. Persons testifying do not have an automatic right to provide rebuttal or other additional information after they have completed their testimony. However, a presiding officer may request further information and may allow further testimony for good cause if requested. The order of presentations shall be as follows:

First, the Department of Environmental Quality shall have the opportunity to summarize or otherwise explain the proposed amendment and the reasons for proposing the amendment and to offer other supporting information. Second, I will receive statements from proponents of the proposed amendment. Third, I will receive statements from opponents of the proposed amendment and, fourth, statements from anyone else wishing

to be heard on this matter. I will need the sign up sheets that are available on the table in the middle of the room after they've been filled out.

If you wish to speak and you've not filled out one of the sheets with the heading, "Notice to Presiding Officer," please do so before it's time for you to speak.

Because we are recording this hearing, all persons making comments will be requested to come forward to sit at the table in front of me where there are microphones. Prior to beginning your statement, please make sure I have your filled out "Notice to Presiding Officer" and then when you begin to speak, identify yourself by name, address and affiliation and whether you favor or oppose the proposal. If you intend to offer a document for my consideration, please make sure the document can be identified by reference to your name.

We are ready to begin the receipt of comments. I will begin with Ms. Lovelace from DEQ.

For the record, my name is Bonnie Lovelace; I am Chief of the Water Protection Bureau at the Department of Environmental Quality representing the Department today.

The Department and Board of Environmental Review are proposing rules that amend the fees for water quality discharge permits. The Water Quality Act directs us to collect fees sufficient to support the full permitting program and to target the fees to the legislatively approved budget.

In preparing the fee proposals, we estimated how many of each kind of permit we expect to manage and process, how much work is involved with each kind of permit, and evaluated flow amounts for those permits with flow-based fees. After the November Board meeting which initiated this rulemaking, the Water Protection Bureau prepared and mailed out over 800 letters notifying permittees and interested parties of the proposed fee increase. As part of this process, the Bureau calculated the actual fee that would be assessed under the new rules, if adopted, and notified permittees of their actual fee based on the number of outfalls and type of effluent.

Additionally, there is a clerical error in Schedule III.A that the Department would like to correct in the final adoption notice. The Department would like to raise the proposed minimum fee for category "Privately Owned Treatment Works–Minor" from \$750 to \$1,000. See the MAR Notice No. 17-149 at page 7. A proposed modification, in underline and strikeout format, is attached.

We intended to raise the fee for minor permits to \$1,500. In fact, this was provided to the Board in a summary table. Due to the error in the proposal, the Department is asking that the Board retain the minimum fee of \$750, as proposed, for discharges composed of noncontact cooling water. However, the Department is asking that the minimum fee be changed from \$750 to \$1,000 for all other dischargers in the category of "Privately Owned Treatment Works– Minor." This includes those permits previously categorized

by type of effluent such as pit water, storm water, or ground water. While this "raises" the minimum fee relative to what was proposed in the initial rule notice, in fact, those other dischargers are currently paying a minimum fee of either \$1000 or \$2500. Consequently, in comparison to current fees, changing the proposed minimum fee from \$750 to \$1,000 for those dischargers represents either no change or a reduction in fees.

For the record, HB 521 and takings checklists are attached with my comments. Thank you.

Hearings Officer – Are there any other comments from representatives of DEQ? Are there any comments from proponents of the amendments proposed? Are there any comments from opponents of the amendments?

Please come forward.

Because we are recording this, if you could begin with your name.

I'm Nick Clos with representing Montana Rural Water Systems and representing the Executive Board of Montana Rural Water Systems.

Please accept this letter as a written record opposing the proposed increase of discharge permit fees. It is evident to our Board that there is no substantiated justification for this proposed fee increase. This tax increase imposes undue hardship on communities of all sizes, a discharge for their lagoons, treatment facilities, or storm sewers. It also provides no present or future benefit to the communities that it impacts.

Currently, many communities are operating under temporary or old discharge permits due to backlog in the permitting office. As a Board we fail to see how raising the tax, will help correct the inadequacies of the permitting office or provide any additional benefits to the communities. In the letter to the communities, you mentioned that the Department had a budget surplus and utilized \$300,000 per year for the last few years. If the permitting process had not been backlogged on the five-year renewals, would there now be a budget shortfall? The Legislature has approved the hiring of four new FTEs. Will these employees be utilized for TMDLs only, or will they be utilized to help with the backlog of community discharge permits? If the new permitting schedule is approved and the four FTEs are hired and the Department catches up on its back log, will there then be a budget surplus? It seems backwards that the communities must pay up front to have their permit reviewed for renewal. Some of the permits are up to four years behind and the community is still operating on the old permit. The community has paid up front for the renewal. If the review process takes up to five years, then the new renewal date starts five years from the date the new permit is issued. The Department then loses income due to inadequacy in the review process for whatever reason. Wouldn't it make more sense to run an efficient program resulting in communities knowing every five years the permit will be renewed and the program could then depend on that income on a regular basis?

The permit renewal process needs to be reevaluated and changed to meet the needs of the communities. It seems backwards that the communities must notify the Department at least 180 days prior to the expiration date of their current permit to start the renewal process. Yet the permit renewals are backlogged up to four years. If the community fails to notify the Department that the permit needs renewal, they are fined. Many of the permits that have been renewed are riddled with mistakes. If the operator is not delinquent or diligent in following up, the permits remain incorrect for another five to 10 years. Once the mistake is in the permit, it is difficult to get changed. It is apparent to the communities that the permit renewal program has been plagued with problems since the changeover to computer in the mid-90s. One incorrect data input on the loading rates changes everything from chlorine to fecal limits to the community being out of compliance and fined.

The largest gripe in this new fee schedule is increased fees to the community system is the timing. The Department asked the Board in 1998 to implement a new fee schedule to keep up with the program costs. Sending letters to communities on December 10, 2001 asking how this will impact them and requesting a reply by January 3, 2002 is simply unfair. How can a community analyze the impact, draft a letter, and the Department put it all together by the time of the hearing in 17 days with two holidays? The letter states that the fees will be used in January 2002 to calculate the fees due in March by the communities. Every community does their budget on a fiscal year from July 1st to June 30th. These communities do not have the opportunity to react to the increase, let alone budget for it. Many small communities' councils and boards only meet once a month. It is impossible to evaluate the effect of this local sewer rates in this short notice.

The letter also states that the new fee schedule will generate an additional \$479,225 from the program. If the Department is behind and the communities have not had an opportunity to respond, then how did the Department arrive at this amount? We will continue to oppose this fee schedule until the communities have had adequate time to respond and had the opportunity to budget for any fee changes. The Department has known for a long time that their budgets, shortfalls, and new FTEs were approved. We ask that the Department reevaluate the fee increases once the communities have had adequate time to respond and analyze the impact to their individual community.

Thank you.

Executive Board,
Montana Rural Water Systems.

Hearing Officer – Thank you Sir.

Hearing Officer – Other comments by other persons opposed to the amendment.
Please begin by stating your name.

For the record, my name is Mac Mader. I represent Montana Gold and Sapphires Inc., a suction dredge mining company located here in Helena, Montana. My first comment

goes along with the gentlemen that just finished. How in the world can you expect anybody to respond properly to these basically outrageous fee increases in the short term and short time that we were given? And when you look at this date of January 3rd, it is obvious by looking around this room that a lot of people aren't here that should be here. You have weather factors, road conditions; you have people that have gone away on Christmas vacations that are still not back. There are a lot of people that leave for a month or two at this time of the year to go south to avoid winter weather here.

You mentioned in the papers that were sent to me by mail that 200 and some people are affected by these fee increases. And these are not just substantial. These are outrageous fee increases. My fee, annual fee—and I have been involved in this for many years and my corporation has, too—started out there were no fees. That was when basically EPA was handling this. And then the Water Quality Bureau said you know it would be much better, at a meeting a number of years ago, if we handled this instead of letting the EPA handle it. We all agreed and then the fees went from zero, in my case, to—I had a 25 percent discount went to \$750 annually with a \$2,500 fee every five years which is a renewal fee plus the \$750. Now my fee increase for my business has gone from \$750 per year to \$3,000 per year, which if I am correct, is a 400 percent increase. My renewal fee has gone from \$2,500 to \$4,500 a year. Now on that fifth year when that renewal is necessary, I have to come up with, under this fee increase, \$7,500. I can't even imagine how DEQ, Water Quality, whoever is involved in this, can justify these kind of fee increases. And I also cannot understand again, stating to have a meeting at this time of the year with such short notice and expect people to respond thoroughly and correctly on the subject. That's about all I have to say.

Thank you very much.

Hearing Officer – Thank you, Sir.

Hearing officer - Other comments from other opponents to the proposed amendment.

My name is Alec Hansen, and I am representing the Montana League of Cities and Towns. And I am not necessarily an opponent of the proposed fees but I think it is appropriate for me to make some comments, and this is the slot in the agenda where I think these comments would fit best.

Our organization represents all the cities and towns in Montana, virtually every one of those has a publicly owned sewage system. It's 129 cities and towns across the state of Montana. And the proposed fees will have significant effect financially and on our membership. And I have to congratulate the Department. They I think have done the best that they could do to try to get information about these proposed fees out to the cities and towns. They provided information at our annual conference in October, they circulated additional information through the mail, they have been in contact with me numerous times.

But I agree with Mr. Clos. I think the timing of this hearing and the December 10th letter has created some problems. Now I hadn't heard much from our membership about the proposed fees until the December 10th letter was mailed out. Since that time, several small towns have contacted me and indicated the fee increase proposed by the Department would create some fairly significant financial problems that they really did not have time to analyze, and I'm not sure that the Department or the Hearings Officer has received any comments from small cities and towns across the state. They may have but I would think that they would be limited, and I would hope that there would be some way that we could extend this deadline beyond today so that the small towns out there that are affected by these fees would have an opportunity to analyze exactly what they are going to do to local sewer rates, make these comments to the Department, give the Department then the benefit of this information, and then come up with a fee system that will work for everybody. I recognize that the Department may need some additional revenue. I would hope that the Department would also recognize that these proposed fees are going to have some financial affect on cities and towns across the country and across the state, and I would hope that those people out there would have adequate time to present this information to the Department so they would understand exactly what these fees are going to mean to cities and towns and the people across the state who use the water and sewer systems.

Thank you.

Hearing Officer – Any other general comments about the proposed amendment?

I'm Dick Shimer, and I represent the Stimson Lumber Company of Bonner and Libby, Montana. And the comments I have deal with both the fee and the renewal costs. Our costs at Bonner went from almost \$3,000 up to \$12,000 for the annual fee and our renewal fee which should have been completed in 1988 [sic], we submitted our application in March of 1988 [sic], at that time would have been \$4,000, is now going to be \$18,000.

Hearing Officer - That's a five-year renewal fee?

Right. This is an exorbitant increase to accept in a time when, for the last two weeks, last week, and this week, both of our plywood operations have been closed due to economic conditions, poor markets, the basic building industry has been in a slow down for over a year and a half. Our Libby operation, the cost for the annual fee went from almost a little over \$3,800 up to \$9,000.

That's a significant impact on any business to accept when market conditions are good, let alone when they're as bad as they are right now. But we realize that they are behind on the permitting. We've been on an extended permit for Bonner for over three years, but it's just an awful lot to pay all at once for a renewal. We know it's going to impact our Bonner operation \$40,000 this spring. Anyway, we would like to ask that you reconsider the amount of increases on both the annual fee and the renewal fee. And that concludes my comment.

Hearing Officer – Thank you, Sir.

Are there any other comments about the proposed amendment?

Well then thank you for your attendance and statements. The public comment portion of the hearing is concluded. If you intend to offer a document for consideration, please make sure the document again is identified by reference to your name, if you've not already submitted something in writing. If you do intend to submit something in writing, as I said at the beginning, under the terms of the notice, you may do so by e-mail or electronically until 5:00 p.m. today. I will prepare a report of this hearing for the Board of Environmental Review. I expect the Board to consider this matter at its next public hearing on January 25, 2002. I think it will be held in this room. So this hearing is concluded.

Thank you.